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Supreme Court, U.S.
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No. 04-126

# In the Supreme Court of the United States

THE STATE OF ILLINOIS,

*Petitioner*,

vs.

MARY BRAGGS,

*Respondent.*

**On Petition for Writ of Certiorari to the Supreme Court of Illinois**

## REPLY BRIEF FOR PETITIONER

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## ARGUMENT

### I. THE ILLINOIS SUPREME COURT BASED ITS DECISION SOLELY ON FEDERAL CONSTITUTIONAL LAW AND DID NOT INDICATE CLEARLY AND EXPRESSLY THAT IT WAS RELYING ON ADEQUATE AND INDEPENDENT STATE GROUNDS.

The Illinois Supreme Court relied only on federal constitutional law regarding the Fifth Amendment and *Miranda v. Arizona*, 384 U.S. 436 (1965). Respondent wrongly argues that this Court lacks jurisdiction because the Illinois Supreme Court cited three state appellate court decisions in its opinion. The citation to those three cases in the midst of a discussion of federal constitutional law hardly rises to the level of a plain statement indicating clearly and expressly that the court's decision was alternatively based an adequate and independent state law grounds, as required under *Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983).

As this Court explained in *Long*, "when, as in this case, a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so." *Long*, 463 U.S. at 1040-41; *see also Ohio v. Robinette*, 519 U.S. 33, 37 n.* (1996) (stating that "we again reaffirm the *Long* presumption"). All that a state court needs to do is to "make clear by a plain statement in its judgment or opinion that the federal cases are being used only for the purpose of guidance, and do not themselves compel the result the court has reached." *Long*, 463 U.S. at 1041. Accordingly, "[i]f the state court decision indicates *clearly*

*and expressly* that it is alternatively based on bona fide separate, adequate, and independent grounds, [this Court], of course, will not undertake to review the decision." *Long*, 463 U.S. at 1041 (emphasis added). While this Court has recognized the importance of allowing state courts to interpret their state constitutions freely, "'it is equally important that ambiguous or obscure adjudications by state courts do not stand as barriers to a determination by this Court of the validity under the federal constitution of state action.'" *Long*, 463 U.S. at 1041 (*quoting Minnesota v. National Tea Co.*, 309 U.S. 551, 557 (1940)).

Not only did the Illinois Supreme Court fail to make a plain statement indicating "clearly and expressly" that it was relying on separate, adequate, and independent state grounds, the court failed to refer even once to the state constitution or state law in its opinion. Instead, the court relied on the federal constitution and a myriad of cases from this Court, the federal courts, and courts of other states to support its decision. Pet. App. 13-17.[1] The Illinois Supreme Court framed the issue purely in terms of the federal constitution, specifically describing the issue as follows: "The determination of whether a defendant is 'in custody' for *Miranda* purposes involves 'two discrete inquiries * * *: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave.'" Pet. App. 13 (*quoting Thompson v. Keohane*, 516

[1] Respondent cites to the published version of the Illinois Supreme Court's original decision on December 18, 2003. Opp. at 17, 19, 21. That version, which is at 209 Ill. 2d 492 (2003), is the original decision of the court before its modification upon the denial of rehearing on April 15, 2004. The April 15, 2004 opinion has not yet been released for publication, although it is in the appendix to the petition and is online at 2004 Ill. LEXIS 1013, 1015.

U.S. 99, 112 (1995); *United States v. Badmus*, 325 F.3d 133, 138 (2d Cir. 2003); also citing *Berkemer v. McCarty*, 468 U.S. 420, 442 (1984)). The court never stated that it also had to determine independently whether the person was "in custody" for purposes of the Illinois constitution or Illinois law.

As the basis for modifying the objective reasonable person standard to include consideration of the mental capacity of the specific defendant, the court relied heavily on *Alvarado v. Hickman*, 316 F.3d 841 (9th Cir. 2002), *rev'd sub nom. Yarborough v. Alvarado*, 541 U.S. ___, 124 S.Ct. 2140 (2004). Pet. App. 15-17. After a thorough discussion of the Ninth Circuit's reasons for modifying the reasonable person standard to include consideration of the defendant's status as a juvenile, the Illinois Supreme Court then included a string citation to similar decisions from six other states. Pet. App. 16-17. All of those cases also discussed modifying the custody determination for *Miranda* to include consideration of the juvenile defendant's age.

In the absence of anything in the Illinois Supreme Court's opinion close to the clear, plain statement required in *Long*, respondent is left pointing to the court's citation to the following three state appellate court cases: *In re J.W.*, 274 Ill. App. 3d 951, 960, 654 N.E.2d 517 (1995); *People v. Armstrong*, 318 Ill. App. 3d 607, 614-15, 743 N.E.2d 215 (2000); and *People v. Patel*, 313 Ill. App. 3d 601, 730 N.E.2d 582 (2000). Opp. at 17. All three of those cases, however, involved solely federal constitutional issues. None of them were based on separate, adequate, and independent state grounds.

The court's citations to *J.W.* and *Armstrong* appear at the end of a long string citation to cases from six other states that used a modification to the reasonable person custody test similar to that used by the Ninth Circuit in

*Alvarado*. Pet. App. 17. Significantly, both *J.W.* and *Armstrong* involved issues solely under the federal constitution, specifically whether each defendant was under arrest for purposes of the Fourth Amendment. *J.W.*, 274 Ill. App. 3d at 951, 654 N.E.2d at 521-22; *Armstrong*, 318 Ill. App. 3d at 614-15, 743 N.E.2d at 220-21 (*citing Dunaway v. New York*, 442 U.S. 200 (1979); *J.W.*, 274 Ill. App. 3d at 952-53, 956, 960-62, 654 N.E.2d 517). Similarly, the Illinois Supreme Court cited to *Patel* to explain the general process for determining whether a person is in custody for purposes of *Miranda*. Pet. App. 13. The issue in *Patel* involved whether the defendant was entitled to *Miranda* warnings. *Patel*, 313 Ill. App. 3d at 604, 730 N.E.2d at 584-85 (*citing Thompson*, 516 U.S. at 112; *Stansbury v. California*, 511 U.S. 318, 324-25 (1994); *Miranda*, 384 U.S. at 444, 477-78). The courts in *J.W.*, *Armstrong*, and *Patel* based their decisions on federal constitutional law, not state law. None of the courts in *J.W.*, *Armstrong*, or *Patel* made a plain statement to indicate clearly and expressly that they were alternatively basing their decisions on bona fide separate, adequate, and independent grounds. The Illinois Supreme Court's citation to those three state appellate court cases does not even approach the standard set forth in *Long*. *See, e.g.*, *Robinette*, 519 U.S. at 36-37 (reaffirming the *Long* presumption, this Court held that it had jurisdiction because the state court's opinion clearly relied on federal law, even though the state court's opinion mentioned the state constitution and cited to a state case, which itself applied the federal constitution).

In short, this Court has jurisdiction because the Illinois Supreme Court based its decision exclusively on federal constitutional law. The Illinois Supreme Court never referred to state law in its opinion. The court never made a plain statement to indicate clearly and expressly that its decision was alternatively based on bona fide separate,

adequate, and independent grounds as required by *Long*. Accordingly, this Court has jurisdiction under 28 U.S.C. § 1257(a).

## II. THE ILLINOIS SUPREME COURT'S USE OF A "MODIFIED" REASONABLE PERSON STANDARD CONFLICTS WITH THIS COURT'S DECISION IN *YARBOROUGH V. ALVARADO* AND THIS COURT'S PRIOR DECISIONS REGARDING CUSTODY FOR PURPOSES OF *MIRANDA*.

Respondent argues that *Alvarado* is distinguishable (Opp. at 19-20), but fails to address the language used by this Court in that case in rejecting the notion that its precedents justified modification of the objective reasonable person standard to include consideration of the defendant's age. In *Alvarado*, this Court explained that "[o]ur opinions applying the *Miranda* custody test have not mentioned the suspect's age, much less mandated its consideration." *Alvarado*, 124 S.Ct. at 2151. The Illinois Supreme Court, like the Ninth Circuit in *Alvarado* and respondent in her brief here, "ignored the argument that the custody inquiry states an objective rule designed to give clear guidance to the police, while consideration of a suspect's individual characteristics . . . could be viewed as creating a subjective inquiry." *Alvarado*, 124 S.Ct. at 2151-52.

The Illinois Supreme Court relied heavily on the Ninth Circuit's opinion in *Alvarado*. Pet. App. 15-17. After noting that the same rationale used by the Ninth Circuit to modify the reasonable person standard to take into account the characteristics of juveniles should be applied to the mentally retarded, the Illinois Supreme Court employed its own modified test and held that "a reasonable person *with defendant's mental capacity* would have

believed he or she was in custody and not free to leave the police station." Pet. App. 19 (emphasis added).

This Court's rejection of the Ninth Circuit's reasoning puts the Illinois Supreme Court's opinion into conflict with this Court's *Alvarado* decision and the myriad of other decisions of this Court that describe the custody test as an objective one, as set forth in the petition. Pet. 9-10. While *Alvarado* was decided in the context of a federal habeas corpus case, petitioner acknowledged this in the petition and explained why that makes it even more important that this Court grant certiorari here and decide this issue on the merits. Pet. 12-13. Unlike *Alvarado*, this case presents the Court with the opportunity on direct review to squarely decide the issue of whether the objective *Miranda* custody test should incorporate a suspect's personal characteristics, such as a suspect's mental capacity, as part of that inquiry.

Respondent's argument that the Illinois Supreme Court's decision actually followed the holding of *Stansbury v. California*, 511 U.S. 318 (1994), is equally meritless. Opp. 20, 22. In *Stansbury*, this Court observed that "[o]ur decisions make clear that the initial determination of custody depends on the *objective* circumstances of the interrogation, *not on the subjective views harbored by* either the interrogating officers or *the persons being questioned*." *Stansbury*, 511 U.S. at 323 (emphasis added). This Court explained in *Alvarado* that "[i]t is possible to subsume a subjective factor into an objective test by making the latter more specific in its formulation." *Alvarado*, 124 S.Ct. at 2151. The Illinois Supreme Court effectively turned the objective test into a subjective one when it held that "a reasonable person with defendant's mental capacity would have believed that he or she was in custody and not free to leave the police station." Pet. App. 19. Rather than provide "clarity and logical meaning to

[the] *Stansbury* requirement" as respondent argues (Opp. 22), the Illinois Supreme Court's opinion violates the requirement in *Stansbury* that the custodial inquiry be objective. As noted in the petition (Pet. 8), the Illinois Supreme Court failed even to acknowledge that the *Miranda* custody test is an objective one.

Respondent then resumes her argument that the Illinois Supreme Court's decision was based on Illinois law. Opp. 20-21. As explained in Section I, *supra*, the court grounded its decision solely on federal constitutional law. The court cited several cases from the federal circuits and other states in determining whether the respondent was in custody for purposes of *Miranda*. The court's citations to *Armstrong* and *J.W.*, which respondent highlights on page 21 of her brief, did not transform its reasoning to being grounded in Illinois law. As explained above, both *Armstrong* and *J.W.* involved issues solely under the federal constitution. Moreover, both of those cases addressed the issue of whether each defendant was under arrest for purposes of the Fourth Amendment, not whether the defendants were in custody for purposes of *Miranda*. *Armstrong*, 318 Ill. App. 3d at 614-15, 743 N.E.2d at 220-21 (*citing Dunaway v. New York*, 442 U.S. 200 (1979)); *J.W.*, 274 Ill. App. 3d at 952-53, 956, 960-62, 654 N.E.2d at 521-22. The court's inclusion of those two state appellate court cases did not turn its decision into one based on state law, especially since the court never once expressly discussed state law and focused instead on federal and other states' opinions regarding custody under *Miranda*.

## CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, the judgment of the Illinois Supreme Court should be vacated and remanded for reconsideration in light of *Yarborough v. Alvarado*, 541 U.S. ___, 124 S.Ct. 2140 (2004).

Respectfully submitted,

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